IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10091 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYENDRASINGH ANIRUDHSINGH JADEJA

Versus

GUJARAT STATE MACHINE TOOLS CORPORATION LTD

Appearance:

MR TR MISHRA for Petitioner

MR MANISH R BHATT for Respondent No. 1, 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/04/2000

C.A.V JUDGEMENT

Heard the learned advocates for the respective parties.

The brief facts of the present writ petition are

that, the petitioner was working as permanent employee with the respondent no. 1 - Gujarat State Machine Tools Corporation Limited [hereinafter referred to as, `the respondent-Corporation'] for more than 13 years and his services came to be terminated on 13th November, 1988 by the said respondent-Corporation. The said order of termination came to be challenged by the petitioner before the Labour Court at Bhavnagar being Reference (LCB) No. 74 of 1989 wherein the Labour Court, by an Award dated 27th May, 1997 directed the respondent No. 1 Corporation to reinstate the petitioner in service with continuity and with 75% backwages for interim period and with costs of Rs. 500/-. The said Award came to be challenged by the respondent no. 1 Corporation before this Court in Special Civil Application No. 2339 of 1998. This Court [Coram : N.N Mathur, J.] while partly allowing the said writ petition on 10th November, 1998 has made the following order :-

`Rule.

2. Heard the learned counsel for the parties. The respondent workman raised an industrial dispute with respect to his removal from service which culminated into a reference to the Labour Court, Bhavnagar. The case of the petitioner Company is that the workman remained absent; inspite of repeated notices, he did not turn up; in fact he was never removed from service. However, on appreciation of evidence the Labour Court found it to be a case of termination. In view of this an award has been made to reinstate him with 75 per cent backwages.

3. It is contended by Shri M.R Bhatt, learned advocate for the petitioner that the respondent workman did not appear inspite of repeated notices. He has invited my attention to the chart at page 22 of the paper book showing his regular absence. On the other hand, it is stated by Shri Mishra, learned advocate for the respondent workman, that the respondent could not report for duty on account of his serious heart ailment.

4. It appears that the workman was given notices, on various dates i.e., 23.12.1998, 2.,1.1989, 11.1.1989, 31.1.1989, 7.2.1989, 27.2.1989, 13.3.1989 and 17.5.1989 in writing, as

well as public notice, etc. These aspects have not been properly appreciated by the Labour Court. In my view, thus, the respondent workman is not entitled to back wages.

5. In view of this, this Special Civil Application is partly allowed. The direction to pay 75 per cent of the backwages is quashed and set aside. The award with respect to reinstatement remains intact. It is made clear that the respondent workman shall be entitled to full salary from the date of publication of the award. Rule is made partly absolute to the aforesaid extent. No order as to costs.'

In pursuance to the above referred order made by this Court, the petitioner submitted his application to the respondent no. 1 Corporation on 13th September, 1998 to reinstate him in service.

In the meanwhile, the respondent no. 1 Corporation was closed from 1.10.1997. The BIFR on 7th March, 1997 has opined that it would be wound up under Section 20 (1) of the SICA and the Hon'ble Gujarat High Court has registered the said opinion in Company Petition No. 99 of 1997 and issued notice on 2.4.1997 for hearing of the said petition. The Bhavnagar Jilla Mazdoor Sang, Bhavnagar filed Special Civil Application No. 1714 of 1998 for payment of all legal due of the workmen of Gujarat State Machine Tools Corporation [respondent no. 1 herein]. After due deliberations, an amicable settlement by way of package deal with the Bhavnagar Jilla Mazdoor Sangh was arrived at under the provisions of Sec. 2 (P) of the Industrial Disputes Act, 1947 read with Rule 62 of the Industrial Disputes (Gujarat) Rule, 1966. As per the said settlement between the respondent no. 1 and Bhavnagar Jilla Mazdoor Sangh, Bhavnagar dated 18th March, 1999, it was agreed that the said settlement shall cover only the permanent and regular workmen and also supervisory staff referred to therein as an employees who were on the muster roll of the Company as on 1.10.1997 and continued as such till 31.12.1998. It was also agreed that the cut off date for determining the dues shall be 31st December, 1998 and none of the employees would be entitled to any benefits after the said date. It is also agreed that the basis of determining the dues shall be the basic pay, dearness allowances and house rent allowances, as the case may be, it stood on 30.9.1997 that is to say for the month of September, 1997. Under Item No. 4, there is one

condition with respect to the fact that employees concerned who have put in continuous service of one year ending 30.9.1997 shall be paid the due and thereafter, how the amount is required to be paid is also mentioned.

Mr. Mishra, learned advocate submitted that the respondent no. 1 is not giving any benefit to the petitioner workman in terms of the settlement dated 18th March, 1999 on the ground that the petitioner was not in service and he has not put in continuous service of one year upto 30.9.1997, and therefore, the present writ petition has been filed by the petitioner workman praying that the respondents be directed to grant the benefit under the settlement arrived at between the Corporation and the Union and also direct the respondents to pay wages from the date of Award dated 25th May, 1997 till the date of payment of voluntary retirement benefits. It has been contended by Mr. Mishra that once the termination order dated 13th November, 1988 has been set-aside by the Labour Court, Bhavnagar under its Award dated 27th May, 1997 and granted reinstatement to the petitioner in service with continuity and 75% of the backwages for the interim period, and the learned Single Judge of this Court while partly allowing the Special Civil Application No. 2339 of 1988 had directed the respondent no. 1 Corporation to reinstate the petitioner workman in service without backwages, it is the duty of the Corporation to treat the petitioner in continuous service. According to Mr. Mishra, reinstatement includes continuity in service. Mr. Mishra in support of this argument has placed reliance upon one decision of this Court reported in Vasantika R. Dulia v. Baroda Municipal Corporation [1998 (1) CLR 32] wherein it has been held that if the Labour Court has been granted reinstatement which includes continuity of service, then the workman is entitled to the benefit of fixation of salary for interim period notionally and is also entitled to increments notionally for the interim period. So, in short, it is held that reinstatement includes continuity of service of interim period, and therefore, according to Mr. Mishra, the Labour Court has passed Award on 27.3.1977 and it was published by the Labour Commissioner on 31st July, 1997, and according to the terms of Settlement, the settlement covers only permanent and regular workman and also the supervisory staff who were on the muster roll of the Corporation as on 1st October, 1997 and continued as such till 31st December, 1998. He further submitted that there is no dispute that the petitioner was working as a permanent and regular employee of the respondent no. 1 and because of the order made by the Labour Court, he was entitled to

reinstatement and also entitled to full salary as per the directions given by this Court in Special Civil Application No. 2339 of 1998 from the date of publication of Award. Therefore, according to Mr. Mishra, the petitioner is deemed to be in service with effect from 31st July, 1997, the date on which the Award has been published by the Labour Commissioner, and therefore, the petitioner is entitled to the benefit of the said settlement. Mr. Mishra further submitted that as per the Item No. 4 of the said Settlement, when the reinstatement has been granted by the Labour Court then continuity of service has to be there, and therefore, petitioner is also satisfying the condition of putting in continuous service of one year ending on 30.9.1997. Therefore, all the conditions of settlement have been satisfied by the petitioner and inspite of that fact, the respondent no. 1 is not giving benefit of the said settlement.

On the other hand, learned advocate Mr. Bhatt appearing for the respondent no. 1 has pointed out that service of petitioner was terminated because of absenteeism and he had not joined duty inspite of several notices, and therefore, petitioner is not entitled to the benefit of settlement. Mr. Bhatt submitted that on 1st October, 1997 the Corporation was closed. Mr. Bhatt submitted that even otherwise writ is not maintainable as the respondent no.1 is a Limited Company and the respondent no. 2-GIIC has no connection or control over the respondent no. 1. It was further submitted that if the writ is found to be maintainable, then the petitioner is not satisfying the terms of the settlement; especially item no. 4 of the settlement, and therefore, petitioner is not entitled to any amount of benefit. Mr. Bhatt argued that it is not a fit case for sympathy though the petitioner had completed 13 years of service. Mr. Bhatt also argued that petitioner cannot claim the benefit of settlement as of right and that the Company Petition No. 99 of 1997 for winding up of the respondent no.1 is pending, and therefore, according to him, petitioner is not entitled to any reliefs under the writ petition filed under Articles 226 & 227 of the Constitution of India.

Countering the arguments made by Mr. Bhatt, learned advocate Mr. Mishra has submitted that there are decisions on the point that even writ can be issued against the private parties. In this context, Mr. Mishra has placed reliance upon the decisions in the matters of Shri Anandi Mukta Sadguru S.M.V.S.J.M.S Trust v. V.R Rudani, AIR 1989 SC 1607; of The Panthar Power Kamgar Sanghatana, Aurangabhad v. Y.C Jahalani,

Executive Director & Ors., reported in 1998 (1) CLR 444; of H.M.T Limited v. Employees' State Insurance Corporation, reported in 1998 (1) LLN 922; of S.S Anand & Others v. Management of Mahatma Gandhi Vidya Peeta (Regd.) Bangalore & Another, reported in 1998 (3) LLN 259; of Firestone Employees Union v. State of Gujarat, reported in 1998 (II) CLR 799; and of Allahabad High Court in the matter of Harsh Vardhan Agarwal & Others v. Director General, Indian Council of Medical Research & Others, reported in 1998 Lab.IC 2544. In light of the aforesaid citations, Mr. Mishra submitted that writ can be issued against the private persons or Company while exercising powers under Art. 226 by the High Court, and therefore, this petition be entertained and reliefs prayed for by the petitioner be granted in terms of the settlement.

Considering the submissions made by both the learned advocates, one aspect and fact is very clear that the petitioner was a permanent employee of the respondent no. 1 and had put in more than 13 years continuous service prior to the date of his termination ie., 13th November, 1988. It is also undisputed that the Labour Court had granted reinstatement with continuity and 75% backwages for the interim period, which Award subsequently came to be modified by the learned Single Judge of this Court while partly allowing the writ petition filed by the respondent no. 1, granting reinstatement without backwages for the interim period, meaning thereby the petitioner is entitled to full salary from the date of publication of award. It is also an undisputed fact that the respondent no. 1 has been closed with effect from 1st October, 1997 and a Company petition is pending before this Court. Therefore, if other workmen have got the benefit of the said settlement, the same may be applied to the petitioner's case also because the item no. 1 of the terms of settlement dated 18th March, 1999 stipulates that the said settlement shall cover only the permanent and regular workmen and also supervisory staff who were on the muster roll of the Company as on 1st October, 1997 and continued as such till 31st December, 1998. Now, if the said Award is fully implemented in accordance with the directions given by this Court then naturally petitioner is deemed to be in service and is entitled to the benefit of the settlement as per the item no. 1 thereto. Even according to Item No. 4 of the said settlement, if the petitioner is directed to be reinstated in service with continuity in service and the order of termination has been set-aside then naturally, the direct effect of the said direction is that

petitioner is deemed to have been in service for all purposes during the interim period, and therefore, though the petitioner has not actually worked and has not put in continuous service of one year ending on 30th September, 1997 but in view of the directions of the Labour Court as well as by the learned Single Judge, the petitioner is deemed to be in service for all purposes, therefore, according to my opinion, the petitioner is entitled to the benefits of settlement dated 18th March, 1999.

Now the question remains that the respondent no. 1 has not implemented the Award made by the Labour Court, Bhavnagar, which has been confirmed by this Court in Special Civil Application No. 2339 of 1998, and in such a situation whether this Court can direct the respondent no. 1 to implement the award in question or not ? The fact remains that the award passed by the Labour Court, Bhavnagar has become final under the provisions of the Industrial Disputes Act as the said has not been carried in appeal after the order made by the learned Single Judge in Special Civil Application No. 2339 of 1998. Therefore, if the Award passed by the Labour Court is considered to be final under the provisions of the I.D Act, then the petitioner is having a legal right to be reinstated in service with continuous service and accordingly there is a corresponding obligation imposed upon the employer to take steps to implement the award. In absence of any justification for not implementing the award justifies the conclusion that the management has failed to carry out their duty and thus have resulted in clear infringement of legal right of the workman. Therefore, the petitioner workman has a right to seek a writ of mandamus against the respondent-Corporation and the respondent no. 1 having failed to fulfill their obligation under the Award are not entitled to raise a plea of availability of alternative remedy and they are not entitled to plead that the workman should be non-suited for his alleged failure to avail the alternative remedy. If the award is not implemented, in such a situation it amounts to breach of Section 29 and prosecution can be filed against the respondent no. 1 but mere prosecution of the defaulting party or even his conviction does not give any tangible relief to the petitioner. Moreover, in a given case, the Government may sanction the prosecution of the defaulting party and in another case it may refuse to sanction the prosecution and in yet another case, it may not pass any decision or pass order on the application filed by the workman. The workman in that event will have to seek a writ of mandamus from the High Court by filing a petition under Art. 226 of the Constitution of India for issue of

direction to the Government to decide his application. It is thus evident that the workman cannot avail any remedy as a matter of right so far as Sec. 29 is concerned. Even if the respondent no. 1 is prosecuted and ultimately convicted for non-compliance of the Award, the workman does not get any real relief because the Act of 1947 does not vest power in the Court which punishes the employer under Sec. 29 to order reinstatement of the workman in compliance of the Award. Further, in a given case, any unscrupulous employer will easily manage non-execution of the recovery orders, and the poor workman shall have no option but to knock the doors of the High Court under Art. 226 of the Constitution. Therefore, time has come when the people have started feeling that they have been let down by the two organs of the State and they look upon the Courts with a ray of hope. Common man's faith in the system of dispensation of justice still exists. However, failure of the Courts to undue injustice done to the citizens will shake the confidence of the people. The Courts will have to be more vigilant in the discharge of their duties to safeguard and legal fundamental rights of the individual. Public authorities particularly the administrative authorities have developed an attitude of total insensitiveness towards the needs of the people. This has naturally compelled the people to look upon the Court for solace and redressal of injustice. Nodoubt, this has led to an immense increase in the volume of litigations but that should not threaten the Courts and there is no need to accept the suspicious arguments or evolve methodologies to non action or arbitrariness of public authorities. The Courts have to guard themselves against the allegation of being protractor of haves in the society. Denial of the relief to the poor and small man on the ground of availability of alternative remedy or on technical ground of writ is not maintainable or power under Art. 226 of the Constitution shall not be invoked, will not do any good to the society.

Mr. Bhatt has also raised a contention that the award passed by the Labour Court is void and is not binding to the respondent no. 1 and they cannot enforce the same against the respondent no. 1. In such a situation, the view taken by the Apex Court in the matter of Nani Gopal Sarkar & Ors. V. Heavy Engineering Corporation Limited, reported in AIR 1990 SC 1391, may be taken into consideration wherein it has been held that writ petition by employees alleging non-implementation of award by employer. No plea by employer that award is void or is not binding on them or they do not want to enforce it writ petition could not be dismissed on ground

that award did not comply with the procedure under Sec. 10 when such stand was not taken by the employer. In the said case, learned Division Bench of Patna High Court has held that writ can be issued against the employer to implement the award passed by the Labour Court under the provisions of the I.D Act which is binding to the employer and it is final under the provisions of the I.D Act.

Considering all these aspects, I am of the view that the petitioner is entitled to all the reliefs prayed for, and accordingly, in the interest of justice, instead of directing the petitioner to avail the alternative remedy under the provisions of the Industrial Disputes Act, this Court in exercise of powers conferred under Arts. 227 & 227 of the Constitution and in light of the peculiar facts of the present case, hereby directs respondent no. 1 to grant all the benefits to the petitioner, under the settlement dated 18th March, 1999 and pay him all the moneys due in accordance with the Award made by the Labour Court, Bhavnagar. Accordingly, this petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

In view of the fact that this petition has been allowed, the respondent no. 1 is directed to grant all benefits of the settlement dated 18th March, 1999 to the petitioner herein [from the date of publication of the Award] within a period of two months from the date of receipt of certified copy of this judgment.

[H.K Rathod, J.]

Prakash*